

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

Amendatory Section: (Amending WSR 03-12-058, filed 6/2/03, effective 7/3/03)

WAC 458-20-185 Tax on tobacco products. (1) Introduction. ~~((This rule explains the tax liabilities of persons engaged in business as a retailer, distributor or subjobber of tobacco products. The tax on tobacco products is in addition to all other taxes owed. For example, retailers, distributors, and subjobbers are liable for business and occupation tax on their retailing or wholesaling activities, use tax on tobacco products distributed as samples, and litter tax on the value of the tobacco products. See WAC 458-20-186 for tax liabilities associated with taxes which apply exclusively to cigarettes.~~

~~———— (2) Definitions. The following definitions apply to this rule.~~

~~———— (a) "Tobacco products" means all tobacco products except cigarettes as defined in RCW 82.24.010. The term includes:~~

~~———— (i) Cigars, cheroots, stogies, and periques;~~

~~———— (ii) Granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco;~~

~~———— (iii) Snuff, snuff flour, cavendish, plug and twist tobacco, fine cut, and other chewing tobaccos; and~~

~~———— (iv) Shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.~~

~~———— (b) "Manufacturer" means a person who manufactures and sells tobacco products.~~

~~———— (c) "Distributor" means:~~

~~———— (i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;~~

~~———— (ii) Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;~~

~~———— (iii) Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers; or~~

~~———— (iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.~~

~~———— (d) "Subjobber" means any person, other than a tobacco manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.~~

~~———— (e) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.~~

~~———— (f) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes all gifts by persons engaged in the business of selling tobacco products, for advertising,~~

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as a means of evading the provisions of chapter 82.26 RCW, or for any other purposes whatsoever.

— (g) "Wholesale sales price" means the established price for which a manufacturer sells tobacco product to the distributor, exclusive of any discount or other reduction.

— (i) A wholesale sales price that is an established price must reflect the fair market value of the tobacco products. In the case where a seller and buyer establish a sales price that does not reflect fair market value, such as may occur in certain sales between affiliated companies, the wholesale sales price is the fair market value of the tobacco product and not the sales price established by the seller and buyer.

— (ii) The phrase "discount or other reduction" includes any reduction from the established wholesale sales price made to a specific customer or class of customers.

— **Example.** Pursuant to a half-price promotion, a manufacturer sells tobacco products to a distributor. The invoice lists \$100 as the price of the product less a \$50 discount resulting in a net invoice of \$50. The tax is due on \$100 which is the wholesale sales price exclusive of any discount or other reduction.

— (h) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

— (i) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

— (j) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

— (k) "Department" means the department of revenue.

— (l) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

— (m) "Indian country" means the same as defined in WAC 458-20-192.

— (3) **Rate and measure of tax.** The Washington state tobacco products tax is an excise tax levied on the wholesale sales price on all tobacco products sold, used, consumed, handled, or distributed within the state.

— The rate of tax is a combination of statutory percentage rates found in RCW 82.26.020, 82.26.025, and 82.26.028. The total current rate of tax is shown on the current combined excise tax return.

— (4) **Imposition of tax.** The tax is imposed once on all tobacco products sold, used, consumed, handled, or distributed within this state.

— (a) **When tax is imposed.** The tax is imposed at the time the distributor:

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~~—— (i) Brings, or causes to be brought, into this state from without the state tobacco products for sale; or~~

~~—— (ii) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or~~

~~—— (iii) Ships or transports tobacco products to retailers in this state, to be sold by those retailers; or~~

~~—— (iv) Handles for sale any tobacco products that are within this state but upon which tax has not been imposed. For example, a retailer with a place of business in this state purchases for sale tobacco products from an enrolled tribal member of a federally recognized tribe located within Indian country. Because the tax was not imposed on the enrolled tribal member, the retailer must pay the tax.~~

~~—— (b) **Additional occasion when tax may be imposed.** Any retailer who fails to keep invoices as required under chapter 82.32 RCW and which invoices do not conform to the requirements set forth in subsection (5)(b) of this rule is liable for the tax on any uninvoiced tobacco product which that retailer handles for sale.~~

~~—— (c) **When an out-of-state person is a distributor who must pay the tax.** A person located out-of-state who is selling tobacco products to Washington wholesalers from a stock of goods located outside this state is not a distributor and therefore is not liable for the tax.~~

~~—— (i) On the other hand, a person located out-of-state who is selling and shipping tobacco products to Washington retailers from an out-of-state stock of goods is a distributor and is subject to the tax. If the out-of-state person is not required to register and pay taxes in Washington, the retailers to whom it sells must pay the tax. However, such out-of-state persons may elect to register with the state and pay the tax.~~

~~—— (ii) A Washington retailer who purchases tobacco from an out-of-state stock of goods from a person located out-of-state who is not required to register and pay taxes in Washington may provide to that person a certificate affirming that the Washington retailer will remit to the state the tax due. Both the out-of-state person and the Washington retailer should retain a copy of such certificate. The certificate should substantially conform to the example shown below:~~

Retailer's Certificate of Remittance of Tax

The undersigned retailer hereby certifies that the undersigned will remit to the state the tax due on the tobacco products specified below purchased from seller. This certificate shall be considered a part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked by the undersigned in writing or until it expires, whichever occurs first. This certificate expires four years from the effective date.

Name of Seller: _____

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Name of Retailer _____ Effective Date _____

UBI/Registration # _____

Address of Retailer _____

Tobacco products purchased _____

Agent for Retailer (print) _____

Signature _____

____ (iii) A person who is located out of state and who is required to register and pay taxes in Washington may sell and ship tobacco products to a Washington customer who is both a wholesaler and retailer. Under this circumstance, the person, the customer, and the department may enter into a written agreement that identifies the person who will remit to the state the tax due as to those particular sales. The written agreement will contain such other terms and conditions that are acceptable to the department.

____ (iv) When a person located outside Washington distributes samples in this state, that person must pay the tax on those samples.

____ (5) **Books and records.** Since the tobacco products tax is paid on returns as computed by the taxpayer rather than by affixing of stamps or decals, the law contains stringent provisions requiring that accurate and complete records be maintained. The records must include all pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products and must be kept for a period of at least five years after the date of the document or the date of the entry appearing in the records.

____ (a) **Distributors.** Distributors must keep at each registered place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products except retail sales. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

____ (b) **Retailers and subjobbers.** Retailers and subjobbers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

____ (c) **Warehouses.** Records of all deliveries or shipments (including ownership, quantities) of tobacco products from any public warehouse of first destination in this state must be kept by the warehouse.

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~~———— (6) **Nonpayment of tax by retailers.** If the department finds that any nonpayment of tax by the retailer was willful, penalties and interest shall be assessed in accordance with chapter 82.32 RCW. In the case of a second or plural nonpayment of tax by the retailer, penalties and interest will be assessed in accordance with chapter 82.32 RCW without regard to willfulness.~~

~~———— (a) Example. In the course of an audit of Retailer, the department determines that on several occasions Retailer failed to pay the tax. The department does not find the nonpayment to be willful. Retailer owes the tax due on all occasions of nonpayment and the penalties and interest is assessed on all but the first occasion of nonpayment. A few years later Retailer is audited again. The department finds one occasion of nonpayment of tax. In addition to the tax due, penalties and interest will be assessed in accordance with chapter 82.32 RCW.~~

~~———— (b) Example. In the course of an audit of Retailer #2, the department determines that on several occasions Retailer #2 failed to pay the tax. The department determines that the nonpayment of tax was willful. In addition to the tax due on all occasions of nonpayment, Retailer #2 owes penalties and interest on all occasions.~~

~~———— (7) **Reports and returns.** The tax is reported on the combined excise tax return to be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be secured from the department.~~

~~———— Out of state wholesalers or distributors selling directly to retailers in Washington should apply for a certificate of registration, and the department will furnish returns for reporting the tax.~~

~~———— Retailers, distributors, and subjobbers may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement when purchasing tobacco products from certain manufacturers. Please see WAC 458-20-264 and chapter 70.157 RCW.~~

~~———— (8) **Interstate sales and sales to U.S.**~~

~~———— (a) The tax does not apply to tobacco products sold to federal government agencies, nor to deliveries to retailers outside the state for resale by such retailers, and a credit may be taken for the amount of tobacco products tax previously paid on such products. RCW 82.26.110. The credit is not available for sales made for delivery outside this state other than sales for resale to retailers. For example, no credit may be taken for a sale of tobacco products delivered to a consumer outside the state.~~

~~———— (b) To document that the tobacco products were sold to a retailer outside the state for resale by such retailer, the person may obtain from the retailer a certificate which substantially conforms to the following:~~

**Retailer's Certification of Purchase of Tobacco
Products for Resale Outside Washington**

The undersigned buyer/retailer hereby certifies
that the tobacco products specified below are
purchased for resale outside this state by the
undersigned. This certificate shall be considered a

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~~part of each order which the undersigned may give to the seller, unless otherwise specified, and shall be valid until revoked in writing by the undersigned or until it expires, whichever occurs first. This certificate expires four years from the effective date.~~

~~Name of Seller_____ Effective Date_____~~

~~UBI/Registration #_____~~

~~Name of Buyer/Retailer Business_____~~

~~Address_____~~

~~Items purchased for resale_____~~

~~Agent for buyer/retailer (print)_____~~

~~Signature_____~~

~~_____(9) **Returned or destroyed goods.** A credit may also be taken for tobacco products destroyed or returned to the manufacturer on which tax was previously paid. If the credit is claimed against tax owed by the taxpayer or as a refund of tax paid, taxpayers must retain in their records appropriate documentation, affidavits or certificates conforming to those illustrated below:~~

~~_____(a) **Certificate of taxpayer.**~~

**Claim for Credit on Tobacco Products
Tax Merchandise Destroyed**

~~The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:~~

~~That he/she is ____(Title)_____ of the ____(Business Name)_____, a dealer in tobacco products; that the dealer has destroyed merchandise unfit for sale, said tobacco products having a wholesale sales price of \$ _____; that tobacco tax had been paid on such tobacco products; that the tobacco products were destroyed in the following manner~~

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~~and in the presence of an authorized agent of the department of revenue:~~

.....

.....

~~(State date and manner of destruction)~~

.....

.....

.....

.....

~~Attested to:~~

~~By~~

~~Date~~

.....

~~Signature of Taxpayer or
Authorized
Representative.~~

.....

.....

~~Position with Dealer~~

.....

.....

~~Dealer~~

.....

.....

~~Address of Dealer~~

~~APPROVED:~~

.....

~~Authorized Agent of
Department of Revenue of the
State of Washington.~~

~~____ (b) Certificate of manufacturer.~~

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five parts:

(a) Part I provides definitions and explains the tax liabilities of persons engaged in the business of selling or distributing tobacco products (excluding cigarettes) in this state.

(b) Part II explains the licensing requirements and responsibilities for persons making wholesale or retail sales of tobacco products in this state.

(c) Part III explains the requirements and responsibilities for persons transporting tobacco in Washington.

(d) Part IV explains the record keeping requirements and enforcement of the tobacco tax.

(e) Part V describes the credits for tax paid and the procedures that must be followed to qualify for credit. .

Part I - Tax on Tobacco Products (excluding Cigarettes)

(101) **In general.** The Washington state tobacco products tax is due and payable by the first distributor who possesses tobacco products in this state. The measure of the tax in most instances is based on the actual price paid by the distributor for the tobacco product, unless the distributor is affiliated with the seller.

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Actual price"** means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(b) **"Affiliated"** means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(c) **"Board"** means the liquor control board.

(d) **"Business"** means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(e) **"Cigar"** means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(f) **"Cigarette"** has the same meaning as in RCW 82.24.010.

(g) **"Department"** means the department of revenue.

(h) **"Distributor"** means (i) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (ii) any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (iii) any person engaged in the business of selling tobacco products from outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, (iv) any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed. RCW 82.26.010 (3)(a) through (d). (For example, Sunshine Tobacco Shop

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(“Sunshine”) buys cigars from an out-of-state manufacturer for resale to consumers in this state. The cigars are shipped to Sunshine via common carrier. In this instance, Sunshine is a distributor, must have both a retailer's and a distributor's license, and must pay the tobacco products tax on the products it brings into the state. However, if Sunshine bought its merchandise exclusively from in-state distributors that have paid the tobacco products tax on that merchandise, Sunshine would not be considered a distributor, and would need only a retailer's license.)

(i) **"Indian," "Indian country," and "Indian tribe"** have the same meaning as defined in chapter 82.24 RCW and WAC 458-20-192.

(j) **"Manufacture"** means the production, assembly, or creation of new tobacco products. For the purposes of this rule “manufacture” does not necessarily have the same meaning as provided in RCW 82.04.120.

(k) **"Manufacturer"** means a person who manufactures and sells tobacco products.

(l) **"Manufacturer's representative"** means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(m) **"Person"** means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(n) **"Place of business"** means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

(o) **"Retailer"** means any person engaged in the business of selling tobacco products to ultimate consumers.

(p) **"Retail outlet"** means each place of business from which tobacco products are sold to consumers.

(q) **"Sale"** means (i) any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. (ii) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of this chapter.

(r) **"Sample"** and **"sampling"** have the same meaning as in RCW 70.155.010. Sampling is prohibited in this state. See chapter 70.155 RCW.

(s) **"Store," "stores," or "storing"** means the holding of tobacco products for later sale or delivery inside or outside this state. For example:

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(i) Wilderness Enterprises ships products from out of state to its Kent warehouse. All products are intended for future sale to Alaska. Wilderness Enterprises is a distributor that stores tobacco products in this state. Wilderness Enterprises is liable for tobacco products tax on the products stored in this state. (However, see section 401 of this rule for credits that may be available to Wilderness Enterprises for out-of-state sales.)

(ii) Cooper Enterprises brings tobacco products into this state for sale. It rents storage space from a third party, Easy Storage. Cooper Enterprises, not Easy Storage, is responsible for the tax and reporting requirements on the stored tobacco products.

(t) **"Taxable sales price"** means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products. For purposes of this subsection, "person" includes both persons as defined in subsection (m) of this section and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

For purposes of this subsection, "person" includes both persons as defined in subsection (m) of this section and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price for which other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in subsection (q)(ii) of this section, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (t)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

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(u) **"Taxpayer"** means a person liable for the tax imposed by chapter 82.26 RCW.

(v) **"Tobacco products"** means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, including wrapping papers or tubes that contain any amount of tobacco (such as "blunts"), prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010.

(w) **"Unaffiliated distributor"** means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(x) **"Unaffiliated retailer"** means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

(103) **Imposition of tax.** RCW 82.26.030 as amended effective July 1, 2005 states: "It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state shall be the distributor liable for the tax and that in most instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller." The tax is imposed at the time the first distributor possesses the product in this state for sale. RCW 82.26.020(2).

(a) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which the tax imposed. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) BET Wholesalers sells and ships tobacco products from Kentucky via common carrier to Surprise Enterprises in Washington. The tax is due from Surprise Enterprises, because it is the first possessor in Washington that holds the product for sale. However, BET Distributors must give the Liquor Control Board (LCB) notice of its intent to ship tobacco products into this state.

(ii) BET Wholesalers sells and ships tobacco products in its own trucks from Kentucky to Jamie's Enterprises in Washington. The tax is due from BET Wholesalers, because it is the first possessor in Washington that holds the product for sale.

(iii) Garden State Cigars is located in New Jersey. It ships its products to Washington retailers via National Common Carrier. The retailers must be licensed as distributors and are liable for the tax. However, Garden State Cigars must give the Liquor Control Board (LCB) notice of its intent to ship tobacco products into this state.

(104) **Rates.** The Washington state tobacco tax is an excise tax levied on the taxable sales price as defined in RCW 82.26.010. The rate is a combination of statutory rates found in RCW 82.26.020.

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(105) **Promotions.** (a) Tobacco products sold, provided at a reduced cost, or given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state. RCW 82.26.010(5)(b). The taxable sales price for the tobacco products is the actual price for which the taxpayer or other distributors sell the same tobacco products, or a maximum of 67 cents each for cigars.

For example, Etta's (an out-of-state manufacturer) gives Joe's Distributing 500 cigars and 200 cans of snuff as a promotion. Etta's and Joe's Distributing are unaffiliated. Joe's Distributing normally sells this brand of cigars for \$1 each and the snuff for \$2.50 each to unaffiliated distributors and/or retailers. Joe's Distributing owes tobacco products tax on this merchandise. Because Joe's Distributing normally sells each cigar for more than 67 cents, the tobacco products tax is calculated on the cigars at 50 cents each ($500 \times 0.50 = \$250$). The tobacco products tax on the snuff is calculated at 75% of Joe's normal selling price to unaffiliated buyers ($200 \times \$2.50 = \$500 \times 75\% = \$375$) for a total tobacco products tax of \$625.

(b) If a product is purchased or sold at a discount in a promotion characterized as a "2 for 1" or similar sale, the tax is calculated on the actual pro-rated consideration the buyer paid to the unaffiliated distributor, or a maximum of 67 cents a cigar.

For example:

(i) Duke Distributing (an out-of-state wholesaler) ships tobacco products via common carrier to Lem's Tobacco Shop (an unaffiliated Washington retailer). Duke invoices Lem's for \$1500. The sale includes 200 cigars priced "buy one for \$2 and get one free;" the balance of the sale is chewing tobacco priced at \$1300. Lem's Tobacco Shop is liable for the tax. The tax on the chewing tobacco is \$975 ($\$1300 \times 75\%$). Each cigar costs Lem's Tobacco Shop \$1 (200/200 cigars-\$1 per cigar). Because each cigar costs more than 67 cents, the tax on the cigars is capped at \$0.50 each. The tax on the cigars is \$100 (200 cigars \times \$0.50 = \$100). Total tobacco tax due on the invoice is \$1075.

(ii) Shasta Distributing (an out-of-state wholesaler) ships OTP in its own trucks to Lem's Tobacco Shop (an unaffiliated Washington retailer). Shasta invoices Lem's for \$1500. The sale includes 200 cigars priced "buy one for \$2 and get one free;" the balance of the sale is chewing tobacco priced at \$1300. Shasta Distributing owes the tax. Shasta originally purchased the products from an unaffiliated manufacturer for \$300 (\$100 for the cigars and \$200 for the chewing tobacco). The tax on the chewing tobacco is \$150 ($\$200 \times 75\%$). The tax on the cigars is \$75 ($\$100 \times 75\% = \75), because the cigars cost less than 67 cents each ($\$100/200 \text{ cigars} = 50 \text{ cents per cigar}$). Total tobacco tax due on the invoice is \$225.

(iii) Wind Blown Distributing (an out-of-state wholesaler) ships tobacco products in its own trucks to Lem's Tobacco Shop (an unaffiliated retailer located in this state). Wind Blown invoices Lem's for \$1500. The sale includes 200 cigars priced "buy one for \$2 and get one free;" the balance of the sale is chewing tobacco priced at \$1300. Wind Blown Distributing owes the tax. Wind Blown originally purchased the products from an affiliated manufacturer for \$100 (\$25 for the cigars and \$75 for the chewing tobacco).

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The measure of the tax is the actual price for which Wind Blown sells these products to unaffiliated buyers, i.e., Lem's. The tax due on the chewing tobacco is \$975 (\$1300 x 75%). The tax on the cigars is \$100 (200 cigars x 50 cents). The tax on the cigars is capped at \$0.50 each, because each cigar costs more than 67 cents (\$200/200 cigars=\$1 per cigar). Total tobacco tax due on the invoice is \$1075.

Part II - Wholesale and Retail Tobacco Products Vendor Licensing Requirements and Responsibilities

(201) **License required.** No person, other than the US government or its instrumentalities, or an Indian retailer as set forth in Part IV of this rule, may engage in the retail or wholesale distribution of tobacco products in this state without a license.

(203) **Distributor's license.** Prior to selling or distributing tobacco products from a stock of goods in Washington or to retailers in Washington, each distributor must first obtain a tobacco distributor's license from the department of licensing.

(a) **Background check.** Each distributor must undergo a criminal background check before a license will be issued. Chapter 82.26 RCW. The background check must be completed to the satisfaction of the liquor control board and the department. Failure to provide information sufficient to complete the background check may result in denial of the license. A background check will not be required if the applicant has had a background check for a license issued under chapter 66.24 or 82.24 RCW.

(b) **Application.** Application for license or renewal of license is made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A distributor's license is valid for one year from the date it is issued. The annual fees will not apply if the licensee pays the corresponding annual distributor cigarette fees under RCW 82.24.510.

(c) **Multiple locations.** If the distributor sells, intends to sell, or stores tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(204) **Duties and responsibilities of licensed distributors.**

(a) **Sales restricted.** Wholesalers selling tobacco products in this state may sell tobacco products only to Washington retailers or wholesalers who have a current tobacco license, to other licensed wholesalers, the federal government or its instrumentalities, or to Indian tribal entities authorized to possess untaxed tobacco products.

(b) **Manufacturer's Representatives.** Manufacturers selling tobacco products through manufacturer's representatives must provide the department a current list of the names, addresses and telephone numbers of all such representatives. The list is mailed to: Washington State Department of Revenue, PO Box 47477, Olympia WA 98504. The manufacturer must have a distributor's license and its representatives must carry a copy of the manufacturer's distributor license at all times when selling or distributing the manufacturer's tobacco products.

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(205) **Retail license.** Prior to the retail sale or distribution of tobacco products, each retailer must first be issued a retail tobacco license from the department of licensing. A license is required for each location at which tobacco products are sold at retail. Each license must be exhibited at the place of business for which it is issued.

(a) **Application.** Applications for license or renewals of license are made on forms supplied by the department of licensing and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A retail tobacco license is valid for one year from the date it is issued. The annual fees will not apply if the licensee pays the corresponding annual retailer cigarette fees under RCW 82.24.510.

(206) **Duties and responsibilities of retailers.**

(a) A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under this chapter must be licensed both as a retailer and a distributor and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For example, if a retailer buys tobacco products from an Indian smoke shop or an out-of-state wholesaler who does not have a tobacco distributor license, the retailer must obtain a distributor license and pay the tobacco tax due.

(207) **Suspension or revocation of wholesale or retail tobacco licenses.**

(a) The department has full power and authority to suspend or revoke the license of any wholesale or retail tobacco dealer in the state upon sufficient showing that the license holder has violated the provisions of chapter 82.26 RCW or this rule. See RCW 82.26.220 and WAC 458-20-10001 for information on the procedures pertaining to suspension or revocation of cigarette licenses.

(b) Any person possessing both a tobacco products license and a cigarette license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW. For example, if a person has both a cigarette license and a tobacco license, revocation of the tobacco license will also result in revocation of the cigarette license.

(c) A person whose license has been suspended or revoked must not sell or permit the sale of tobacco products or cigarettes on premises occupied or controlled by that person during the period of the suspension or revocation.

(d) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to WAC 458-20-10001.

Part III - Transporting Tobacco Products in Washington

(301) **Transportation of tobacco products restricted.**

(a) Only licensed distributors or retailers in their own vehicles, or manufacturer's representatives authorized to sell or distribute tobacco products in this state, can transport tobacco products in this state. Individuals transporting the product must have a copy of a valid retailer's or distributor's license in their possession and evidence that they are representatives of the licensees. Individuals transporting tobacco products for sale must

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also have in their possession invoices or delivery tickets for the tobacco products that show the name and address of the consignor or seller, the name and address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported. It is the duty of the distributor, retailer, or manufacturer responsible for the delivery or transportation of the tobacco products to ensure that all drivers, agents, representatives, or employees have the delivery tickets or invoices in their possession for all such shipments.

(b) All other persons must give notice to the board in advance of transporting or causing tobacco products to be transported in this state for sale. This includes those transporting tobacco products in this state via common carrier. For example: Peg's Primo Cigars (PPC), a small out-of-state distributor, sells tobacco products to retailers in Washington. PPC ships the products via National Common Carrier. Before placing the product in shipment to Washington, PPC must give notice to the board of the pending shipment. The notice must include the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity and brands of the tobacco products being transported, and the shipment date.

Part IV – Record Keeping and Enforcement

(401) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of tobacco products must be retained. RCW 82.26.060, 82.26.070 and 82.26.080. All records must be preserved for five years from the date of the transaction.

(a) **Distributors.** Distributors must keep at each place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(b) **Retailers.** Retailers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale. Retailers are responsible for the tax on any tobacco products for which they do not have invoices.

(402) **Reports and returns.** The department may require any person dealing in tobacco products in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, shipments, and other data required by the department to maintain control over trade in tobacco.

(a) **Tax Returns.** The tax is reported on the combined excise tax return that must

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be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be obtained from the department.

(b) **Reports.** Retailers and distributors may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement when purchasing tobacco products (e.g., “roll your own tobacco”) from certain manufacturers. Please see WAC 458-20-264 and chapter 70.157 RCW.

(403) **Criminal provisions.** Chapter 82.26 RCW prohibits certain activities with respect to tobacco products. Persons handling tobacco within this state must refer to these statutes.

(404) **Search, seizure, and forfeiture.** Any tobacco products in the possession of a person selling tobacco in this state without a license or transporting tobacco products without the proper invoices or delivery tickets may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. In addition all conveyances, including aircraft, vehicles, or vessels used to transport the illegal tobacco product may be seized and forfeited.

(405) **Enforcement.** Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the liquor control board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers and distributors must allow department personnel and enforcement officers of the liquor control board free access to their premises to inspect the tobacco products on the premises and to examine the books and records of the business. If a retailer fails to allow free access, or to hinders, or interferes with department personnel and/or enforcement officers of the liquor control board, that retailer's registration certificate issued under RCW 82.32.030 is subject to revocation. Additionally, any licenses issued under chapter 82.26 or 82.24 RCW are subject to suspension or revocation by the department.

(406) **Penalties.** Penalties and interest may be assessed in accordance with chapter 82.32 RCW for nonpayment of tobacco tax.

Part V – Credits

(501) **Credits.**

(a) **Interstate and foreign sales.** A credit is available to distributors for tobacco products sold to retailers and wholesalers outside the state for resale. This credit may be taken only for the amount of tobacco products tax reported and previously paid on such products. RCW 82.26.110. No credit may be taken for a sale of tobacco products from a stock of goods in this state to a consumer outside the state.

(b) **Returned or destroyed goods.** A credit may be taken for tax previously paid when tobacco products are destroyed or returned to the manufacturer. Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation.

(c) **Documentation.** Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation. Affidavits or certificates are required, and must

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substantially conform to those illustrated below. The affidavits or certificates must be completed by the taxpayer prior to claiming the credit, and must be retained with the taxpayer's records as set forth in Part VI of this rule.

Claim for Credit on Tobacco Products Sold for Resale Outside Washington

The undersigned distributor under penalty of perjury under the laws of the state of Washington certifies that the following is true and correct to the best of his/her knowledge:

(Business name), (tax reporting number), purchased the tobacco products specified below for resale outside this state. Tobacco products tax has been paid on such tobacco products as set forth below.

Products were purchased from : (name of business)

Date:

Products were sold to: (name of out-of-state buyer)

Address:

Date:

<u>Product</u>	<u>Taxable sales price</u>	<u>Quantity</u>	<u>Tax paid</u>
<u>Cigars exceeding \$0.67 per cigar</u>			
<u>Cigars not exceeding \$0.67 per cigar</u>			
<u>All tobacco products that are not cigars</u>			

Signature of Taxpayer or Authorized Representative:

Name:

Title:

Claim for Credit on Tobacco Products Destroyed Merchandise

(i) Certificate of taxpayer.

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<u>Product</u>	<u>Taxable sales price</u>	<u>Quantity</u>	<u>Tax paid</u>
<u>Cigars exceeding \$0.67 per cigar</u>			
<u>Cigars not exceeding \$0.67 per cigar</u>			
<u>All tobacco products that are not cigars</u>			

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

(Business Name), (Tax Reporting Number), a dealer in tobacco products, has destroyed tobacco products unfit for sale. Tobacco tax has been paid on such tobacco products as set forth above. The tobacco products were destroyed in the manner set forth below. The destruction occurred either (1) in the presence of an authorized agent of the department of revenue; or (2) with prior authorization from the department to destroy the product without an agent of the department present.

Date, manner, and place of destruction:

Signature of Taxpayer or Authorized Representative:

Name: _____

Title:

Witnessed or approved:

Authorized Agent, Department of Revenue

Claim for Credit on Tobacco Products
Returned Merchandise

(ii) Certificate of manufacturer.

<u>Product</u>	<u>Taxable sales price</u>	<u>Quantity</u>	<u>Tax paid</u>

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<u>Cigars exceeding \$0.67 per cigar</u>			
<u>Cigars not exceeding \$0.67 per cigar</u>			
<u>All tobacco products that are not cigars</u>			

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

(Business Name), (Tax Reporting Number), a dealer in tobacco products, has returned merchandise unfit for sale. Tobacco products tax has been paid on such tobacco products as set forth above.

Returned to:

Date:

Method of transport:

Manufacturer's Credit issued on:

Credit memo number:

Signature of Taxpayer or Authorized Representative:

Name:

Title:
